CAO INSTRUCTIONS 14

GENERAL OUTLINE OF CRIMINAL TRIAL PROCEDURES

FOR THE PRO SE DEFENDANT

The following is a general outline of some information you may find helpful in representing yourself. This outline is not intended to inform you of everything you need to know to competently represent yourself. It does not take the place of law school or of experience practicing law. It is intended merely to acquaint you with some of the procedures involved and to provide you with some information about how a jury trial is conducted.

Although you have waived your right to be represented by an attorney, you can change your mind about representing yourself. If you decide you want an attorney, you may either hire your own attorney or ask the judge to appoint an attorney to represent you at public expense. If you want a court-appointed attorney, you should promptly contact the judge's court clerk or secretary to schedule a time to appear before the judge to make that request.

As a general rule, it is your obligation to raise objections to proceedings or events which you contend violated, or could violate, your rights. You are acting as your own attorney. The judge cannot act as your attorney or raise objections on your behalf. You will suffer the consequences of any mistakes you make while representing yourself. Therefore, you should do all you can to acquaint yourself with the proper procedures and rules and to prepare your case for trial. If you have questions about what to do, you should consult an attorney.

You are required to be present at all court hearings regarding your case. If you are not present, any bail posted

could be forfeited, a warrant could be issued for your arrest, and/or you could be punished for contempt of court. If you change your mailing address while this case is pending, you must notify the judge's court clerk or secretary.

PRE-TRIAL PROCEDURES

The Idaho Supreme Court has adopted procedural rules which govern criminal actions. They are called the Idaho Criminal Rules, and you can find them in any county or state law library. You will be bound by these rules even if you have not read them and do not know them. Therefore, you should read them as soon as you can. Some of the rules you may need to know are discussed below.

TIME LIMITS FOR RAISING DEFENSES AND OBJECTIONS

Rule 12 of the Idaho Criminal Rules requires that certain defenses must be raised by a motion filed before the trial. It also sets time limits within which such motions must be filed, although such time limits may be extended in the pre-trial order. You should be aware of the time limits contained in Rule 12 and in the pre-trial order. Rule 12 and the pre-trial order provide that if you fail to make objections or raise defenses within those time limits, such objections or defenses are waived, unless the trial judge for good cause grants relief from the waiver.

MOTIONS

If you want the trial judge to order something, you must first make a motion. Unless the motion is made during a hearing or the trial, it must be in writing. You must state the grounds upon which the motion is made and set forth the relief or order you want. See, Rule 47, Idaho Criminal Rules. The form of the motion is governed by Rule 12(c) of the Idaho Criminal Rules.

Your motion must also be set for a hearing before the judge at which both you and the prosecuting attorney can be present.

At the hearing, you will be able to tell the judge why your motion should be granted, and the prosecuting attorney will be able to tell the judge why it should not be granted. Motions are heard by the judge only at certain specified times. If you want to schedule a motion hearing, first contact the judge's court clerk or secretary for a date and time that the motion can be heard. **IF YOU DO NOT HAVE YOUR MOTION SET FOR HEARING, IT WILL NOT BE DECIDED BY THE JUDGE, AND IT WILL BE TREATED AS IF YOU WITHDREW THE MOTION.**

The motion must be filed with the court and a copy served on the prosecuting attorney as provided in Rule 49 of the Idaho Criminal Rules. You must also file with the court and serve on the prosecuting attorney a notice stating the date, time, and place of the hearing on your motion. The motion and notice of hearing must be served on the prosecuting attorney a specified number of days before the hearing date. See, Rule 45 of the Idaho Criminal Rules.

If the prosecuting attorney files a motion, you must be present at the hearing on that motion. If you oppose the motion, you will have to offer whatever information you believe supports your opposition. Any affidavit opposing the motion must be served at least one (1) day before the hearing. See, Rule 46(c) of the Idaho Criminal Rules.

DISCOVERY

Disclosure by the prosecuting attorney to you. The prosecuting attorney is required to give you, even if you do not request it, any material or information in the prosecuting attorney's possession or control which tends to show you are not guilty, or which would tend to reduce your sentence if you were found guilty.

Rule 16 of the Idaho Criminal Rules also provides that the

prosecuting attorney can be required to give you other information before trial. If you make a written request, the prosecuting attorney is required to permit you to inspect and copy or photograph: (1) any statements made by you or a co-defendant; (2) any items the prosecuting attorney intends to offer into evidence at trial, or that are material to your defense, or that were obtained from or belong to you; and (3) any results or reports of physical or mental examinations, or of scientific tests or experiments, made in connection with your case.

If you make a written request, the prosecuting attorney is also required to provide you with: (1) a list of the names and addresses of all persons who may be called as witnesses by the state, together with any statements made by those witnesses and a record of their prior felony convictions, if any; and (2) police reports.

The above is a summary of the information the prosecuting attorney can be required to provide to you if you make a written request. You should read Rule 16 for a complete description of such information. By motion, you can also request that the judge order the prosecuting attorney to give you additional information not described in Rule 16.

Disclosure by you to the prosecuting attorney. Rule 16 also permits the prosecuting attorney to request in writing that you provide certain information to the prosecuting attorney. That information includes allowing the prosecuting attorney to inspect and copy: (1) items you intend to offer into evidence; and (2) results or reports of physical or mental examinations, and of scientific tests or experiments, which you intend to offer into evidence or which relate to the testimony of a witness you intend to have testify. Upon written request, you also have to provide the prosecuting attorney with a list of the names and addresses

of the persons you intend to have testify at the trial.

Sample forms for discovery. Rule 16 contains examples of forms for requesting information from the prosecuting attorney and responding to the prosecuting attorney's request for information. At the bottom of the sample forms is the following, "(CERTIFICATE OF SERVICE)". A "certificate of service" is a statement that a copy of the document was served on the opposing party as required by the Idaho Criminal Rule 49(a). An example of a certificate of service is as follows:

I certify that I saved a copy: (name and address of the person).

To:
Name_____ [ ] By Hand-delivery
Address_____ [ ] By Mailing
City, State and Zip_____ [ ] By Fax

Date: (date mailed or delivered)

Signed: (by person mailing or delivering document).

Time limits for requesting discovery. Rule 12 of the Idaho Criminal Rules provides time limits within which you must request discovery. Those time limits may be modified in the pre-trial order. You should read the Rule 12 and the pre-trial order.

Continuing duty to provide discovery. You and the prosecuting attorney each have a continuing duty to provide the information requested in discovery. If you obtain additional information, or decide to call additional witnesses, after you have responded to the prosecuting attorney's request for discovery, you must promptly disclose that information in a supplemental response to discovery. The prosecuting attorney must do likewise.

Sanctions for failing to provide discovery. If you or the prosecuting attorney fails to disclose information as required by

Rule 16, or by order of the court, the judge can impose sanctions upon the person who failed to disclose the information. Those sanctions could include requiring the person to pay any expenses incurred as a result of that failure. Such expenses could include attorney fees, jury costs, witness fees, and similar expenses. The judge could also rule that a witness who was not disclosed will not be permitted to testify, or that evidence not disclosed will not be admitted into evidence. Therefore, you must timely disclose to the prosecuting attorney all information requested in writing by the prosecuting attorney in accordance with Rule 16.

WITNESSES

Subpoenaing witnesses. It is your obligation to make sure that any persons you want to testify are present at the trial. You can obtain a court order called a "subpoena" which requires the person named in the subpoena to come to court to testify during the trial. See, Rule 17 of the Idaho Criminal Rules. If you want to subpoena a witness, it is your obligation to prepare the subpoena, to have the court clerk issue it, and to have it served on the witness. Idaho Code § 19-3006 shows what a subpoena should say. If you subpoena a witness, you should also have an affidavit of service prepared and filed with the clerk of the court showing that the witness was subpoenaed.

You do not have to subpoena a witness in order for that person to testify during the trial, but a witness who is not subpoenaed is not required by law to be present at the trial.

Serving subpoenas. Subpoenas can be served by a peace officer or by any other person who is at least eighteen (18) years of age, except subpoenas cannot be served by you or a co-defendant. If you want a peace officer to serve the subpoenas, you should contact the law enforcement agency to find out what that agency requires. Most law enforcement agencies require that

they be given sufficient time before the trial to serve the subpoenas (e.g., that they receive the subpoenas at least five working days before trial). You may also have to provide the agency with information about where the witnesses can be located to be served with the subpoenas.

Witnesses who cannot be at the trial. If a witness will be unable to be present at the trial or a hearing, you can make a motion to take the deposition of the witness. A deposition is testimony of a witness taken under oath and preserved in writing or on videotape. The witness's testimony could then be presented by either reading the written deposition or playing the videotape. See Rule 15 of the Idaho Criminal Rules for the procedures which apply to taking depositions.

Witnesses who are out-of-state. A court of this state cannot subpoena a witness who is in another state. If you want to call as a witness someone who lives in another state, you must first check to see if the state where the witness lives has a statute similar to Idaho Code § 19-3005(1). If it does, then you can present the appropriate certificate to the judge presiding over your case in this state. See, Idaho Code § 19-3005(2). After the judge presiding over your case signs the certificate, you will then have to take the certificate to a judge in the county of the other state where the witness can be found and do whatever is required under the laws of that state.

ITEMS OF EVIDENCE

It is your obligation to make sure that any items (e.g., photographs, documents) which you want to offer into evidence are present at the trial. Items not present in the courtroom cannot be offered into evidence. You cannot expect the trial to be postponed or suspended in order to obtain items you desire to offer into evidence.

If you wish to offer into evidence an item which was seized by city, county, or state law enforcement, you should ask the prosecuting attorney to have the item present at the trial. Your request should either be in writing or made in court, and it must be made before the trial. Making the request during the trial may not give sufficient time to locate the item and bring it to the courtroom. Do not assume that the prosecuting attorney will bring to the trial every item that was seized by law enforcement. The prosecuting attorney will only bring those items the prosecutor intends to offer into evidence as part of the State's case.

You can also require someone to bring an item of evidence to the trial by serving a subpoena *duces tecum* upon the person who has custody of that item. A subpoena *duces tecum* is a subpoena which directs the person to bring a designated item to the trial, and it must be served in the same manner as a subpoena for a witness. Idaho Code § 19-3006 shows what a subpoena *duces tecum* should say. You also must serve the subpoena *duces tecum* far enough before the trial to give the person time to locate the item designated.

TRIAL PROCEDURES

JURY SELECTION

On the day of trial, the clerk will draw the names of all potential jurors, and will write their names on a list in the order in which the names were drawn. You and the prosecuting attorney will each be given copies of that jury list. As will be explained below, during the jury selection some prospective jurors may be excused from the panel and others may be removed by the use of peremptory challenges. The trial jury will consist of the top twelve names remaining on the jury list after potential jurors have been excused and/or removed. You may wish to keep this in mind when questioning the potential jurors because those near the top of the list are more likely to be on the jury than those near the bottom of the list. During the jury selection

process, you may also want to cross off the names of potential jurors as they are excused or removed so you will know which potential jurors are remaining.

Before the trial can begin, a jury of twelve persons, and perhaps one or two alternates, must be selected. The jury selection can be divided into three tasks:

(1) questioning the potential jurors,

(2) excusing potential jurors from the panel, and

(3) removing potential jurors by peremptory challenges.

1. Questioning the potential jurors. The judge will first ask the potential jurors some questions. Then the prosecuting attorney and you will each be given one hour to ask questions, with the prosecuting attorney going first. If you believe the questioning will take more than one hour per side, you must request additional time before the questioning begins.

The purpose of this questioning is to determine if any of the potential jurors has an opinion, personal experience, or special knowledge which may influence that person's decision as a juror in the case. The object is to obtain twelve people who will impartially try the issues of the case upon the evidence presented without being influenced by any other factors. The answers to the questions will help you decide whether you want to challenge any of the jurors for cause, or exercise one of your peremptory challenges to remove a prospective juror. You may direct your questions to any and/or all of the potential jurors. A question asked a prospective juror may be disallowed by the judge if the question is not directly relevant to the person's qualifications to serve as a juror, or is not reasonably calculated to discover the existence of a ground to challenge the prospective juror, or has already been answered by the prospective juror.

Prospective jurors fill out juror questionnaires which

provide some information about them. You can obtain that information from the court clerk before the jury selection starts. It will be either a computer printout containing the information from the questionnaires, or copies of the questionnaires. The information from the questionnaires may be useful when you question the jurors.

Once you have completed your questioning, you must either challenge potential jurors for cause or pass them for cause. Passing the potential jurors for cause means that you do not know of any legal reason why any of them cannot serve as a juror in the case.

2. Excusing potential jurors from the panel. During the jury selection, potential jurors may be excused from the jury panel for undue hardship, extreme inconvenience, or public necessity. This will usually occur if the person is unable to serve as a juror for a medical or other substantial reason. Potential jurors may also be excused "for cause" if their answers reveal either actual or implied bias.

A potential juror has actual bias if the juror has a state of mind regarding the case, or either of the parties, which leads to the inference that the juror will not act with entire impartiality. I.C. § 19-2019. If a potential juror is challenged for actual bias, the trial judge will decide whether the existence of such bias has been shown.

The grounds for finding implied bias are set forth in Idaho Code § 19-2020, which reads as follows:

> A challenge for implied bias may be taken for all or any of the following causes and for no other:
> 1. Consanguinity or affinity within the fourth degree to the person alleged to be injured by the offense charged, or on whose complaint the prosecution was instituted, or to the defendant.
> 2. Standing in the relation of guardian and ward,

attorney and client, master and servant, or landlord and tenant, or being a member of the family or boarder or lodger of the defendant, or of the person alleged to be injured by the offense charged or on whose complaint the prosecution was instituted, or in his employment on wages.

3. Being a party adverse to the defendant in a civil action or having complained against or been accused by him in a criminal prosecution.

4. Having served on the grand jury which found the indictment, or on a coroner's jury which inquired into the death of a person whose death is the subject of the indictment.

5. Having served on a trial jury which has tried another person for the offense charged in the indictment.

6. Having been one of a jury formerly sworn to try the same charge, and whose verdict was set aside or which was discharged without a verdict after the case was submitted to it, or being a witness for the prosecution, or subpoenaed as such.

7. Having served as a juror in a civil action brought against the defendant for the act charged as an offense.

8. Having formed or expressed an unqualified opinion or belief that the prisoner is guilty or not guilty of the offense charged.

9. If the offense charged be punishable with death, the entertaining of such conscientious opinions as would preclude his finding the defendant guilty; in which case he must neither be permitted nor compelled to serve as a juror.

If you believe that the answers given by a potential juror demonstrate actual or implied bias, you may challenge that juror for cause. To do so, you need to identify the potential juror and state that you are challenging the juror for cause. The judge will then decide whether or not the potential juror should be excused, although the judge may ask some additional questions before making that ruling.

All challenges for cause must be made before the jury is sworn to try the case.

3. Removing potential jurors by peremptory challenges. Each side will be permitted to remove a specified number of potential jurors by exercising a "peremptory challenge." You and the state each get the same number of peremptory challenges. The

number of peremptory challenges are set by law, and the judge will tell you how many you will have. Peremptory challenges cannot be used to remove potential jurors because of their race or sex. With those exceptions, you can use a peremptory challenge to remove a potential juror for any reason, or for no reason. Each side will be permitted to exercise peremptory challenges so that the potential jurors do not know who removed them.

The prosecuting attorney and you will alternate exercising your peremptory challenges, one at a time, with the prosecuting attorney going first. For example, the prosecuting attorney will exercise the state's first peremptory challenge, then you will exercise your first peremptory challenge, then the prosecuting attorney will exercise the state's second peremptory challenge, and so forth.

You exercise a peremptory challenge by writing the potential juror's name and juror number on the appropriate piece of paper. You are not required to use all of your peremptory challenges. If you do not want to use a particular peremptory challenge, you may waive it by writing "waive" or "pass" on the paper. If you waive a peremptory challenge, you lose that peremptory challenge. You do not lose your remaining peremptory challenges, however, unless you and the prosecuting attorney waive consecutively. If that occurs, then all remaining peremptory challenges are waived, and the jury is deemed accepted. For example, if you waive your second peremptory challenge and the prosecuting attorney waives the state's next peremptory challenge (its third), then the peremptory challenges would be done. If instead of waiving, the prosecuting attorney exercises the state's third peremptory, then you would still have your third peremptory challenge to use or to waive.

INITIAL JURY INSTRUCTIONS

The judge will give the jury some instructions at the beginning of the trial. Those instructions will generally tell the jury about their duties and responsibilities, what happens during a trial, the charge(s) against you, and the definition of "beyond a reasonable doubt." Before those instructions are given, you will have an opportunity to read them, to state any objections you may have to them, and to request additional instructions. Any requested additional instructions must be submitted in writing.

OPENING STATEMENTS

Before any evidence is presented, the prosecuting attorney will make an opening statement to the jury. The purpose of an opening statement is to tell the jury about the evidence which will be presented so that the jury will have an idea of what the case is about. You are not required to make an opening statement. If you decide to make an opening statement, you may do so immediately after the prosecuting attorney's opening statement, or you may wait until after the state has presented all of its evidence and before you begin presenting your evidence.

PRESENTATION OF EVIDENCE

The Idaho Supreme Court has adopted rules, called the Idaho Rules of Evidence, which will govern the admissibility of evidence during your trial. You may find a copy of those rules at the county or state law library. You may need to know these rules not only to present the evidence you want, but also to keep the state from presenting improper evidence. There are also constitutional provisions and decisions by federal and state courts which affect the admissibility of evidence. The Idaho Rules of Evidence, and the applicable decisions by state and federal courts, will apply during your trial even if you are not familiar with them.

The state presents its evidence first, and then you have an opportunity to present your evidence. If you do so, the state may be permitted to present some additional evidence. The evidence will consist of the testimony from witnesses and any exhibits admitted into evidence.

The person who calls a witness to testify questions that witness first. The other side then has an opportunity to question the witness, and finally the person who called the witness may ask some additional questions. That usually completes the questioning of a witness.

You have the right to testify as a witness. You do not have to do so, however. You have the right to remain silent. You will not be required to testify, to answer any questions, or to say anything. If you decide to testify in your own behalf, you will have to do so by asking yourself questions and then answering the questions. You will not be permitted to tell the jury what happened in a story form. Therefore, you may want to plan in advance the questions you will ask yourself in order to make it easier to present your testimony. You may use notes to help you remember the questions to ask yourself, but you cannot simply read a prepared statement.

If you testify in your own behalf, the prosecuting attorney will also be permitted to question you regarding any facts stated during your testimony, or any facts connected with matters you testified about. The prosecuting attorney will not be permitted to question you about matters unrelated to your testimony, however.

Any exhibits offered into evidence will have to be first marked by the clerk of the court with a numerical or letter designation (e.g., Exhibit 1 or Exhibit A). Then, a witness will usually have to testify to facts which would show that the

exhibit can be admitted into evidence. This is called "laying foundation" for the admission of the exhibit into evidence. The person who wants the exhibit to become evidence then offers the exhibit by stating, "I offer exhibit (whatever the number or letter designation is)." The judge will ask the other side if there is any objection to the exhibit. If there is no objection, the exhibit will be admitted into evidence. If there is an objection, the judge will decide whether the exhibit is admissible.

The judge will not rule on the admissibility of evidence unless there is an objection. If you want to object to a question asked a witness, or to an offered exhibit, you do so by stating, "I object" or "objection" and then stating the legal basis for the objection (e.g., hearsay, irrelevant). When an objection is made, the judge will usually give the other side an opportunity to state briefly why the answer or exhibit is admissible under the law, although if it is clearly admissible or clearly not admissible, the judge may rule immediately. If the judge "sustains" the objection, the answer or exhibit cannot become evidence. If the judge "overrules" the objection, the answer or exhibit can become evidence.

A court reporter will make a record of everything that is said during the trial. For that reason, there are several things you should keep in mind during the trial.

1. Do not speak rapidly, or drop your voice so low that you are difficult to hear.

2. Only one person can talk at a time. Do not start asking another question until after the witness has finished answering the prior question. Also, if you and the prosecuting attorney are debating a legal issue, you must take turns talking.

3. If you have a witness testify about an exhibit, identify the exhibit by its number or letter designation so that it will be clear in the record which exhibit the witness is talking

about.

4. If you call a witness to testify, the first question should be, "What is your name?" You should also have the witness spell his or her complete name.

FINAL JURY INSTRUCTIONS

After all of the evidence has been presented, the judge will give the jury the final jury instructions. If you want to propose any jury instructions, you must present them to the judge in writing. Both sides will be given copies of the final jury instructions before they are read to the jury. You will be able to read them and to state any objections you may have to them.

CLOSING ARGUMENTS

After the judge gives the final jury instructions, each side will have an opportunity to make a closing argument. Because the state has the burden of proof, the prosecuting attorney goes first and last during the closing arguments. In your closing argument, you may tell the jury what you believe their verdict should be and why. You can argue what the evidence shows, why the jury should believe or not believe a witness, what evidence is lacking in the state's case, or anything else relating to the facts shown by the evidence and the application of those facts to the law. During the closing argument, you cannot bring up facts or incidents that were not admitted into evidence.

VERDICT

After the closing arguments, the jury will go to the jury room to reach their verdict. There is no way to predict how long it will take the jury to reach a verdict, and sometimes they will have questions about the law or evidence. Therefore, you and the prosecuting attorney will have to remain in or near the courthouse so that you can be available promptly when needed. If the jury has a question, the judge will discuss that question in open court with both you and the prosecuting attorney present

before giving the jury an answer.

Once the jury has arrived at a verdict, they will return to the courtroom and the verdict will be read with you and the prosecuting attorney present. After the verdict has been read, the judge will ask if either side wants to have the jury "polled" (asked individually if it is or is not their verdict). If you want the jury polled, merely answer "yes" when you are asked. If all jurors answer that it is their verdict, then the jury will be excused.

If the jury finds you "not guilty" of all charges, you will be free to go, and the charge(s) will be dismissed. If the jury finds you "guilty" of one or more charges, then you will be sentenced. The sentencing will usually occur at a sentencing hearing on a later date.

SENTENCING

Before the sentencing hearing, there will be an investigation into your background and the circumstances surrounding the crime. The results of that investigation will be put into a written presentence report. Copies of that report will be given to you, to the judge, and to the prosecuting attorney.

At the sentencing hearing, you will have an opportunity to rebut, explain, or object to anything stated in the presentence report. The prosecuting attorney and you will each be given an opportunity to offer evidence regarding the sentence, and you will each be permitted to make a statement to the judge regarding the sentence.